

200707159



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 20 2006

T. EP: RA: uk

Uniform Issue List: 408.01-00

Legend:

Decedent A	=
Bank B	=
Bank C	=
Firm D	=
Individual E	=
Amount F	=
Amount G	=
Amount H	=
Amount J	=
Amount L	=
Amount M	=
State I	=
Trust K	=
Date M	=
Date N	=
Date P	=
Date Q	=
Date R	=

Page 2

Date S =

Date T =

Date U =

Date V =

Date W =

Date X =

Date Y =

IRA X =

IRA Y =

Account T =

Plan Y =

Statute Z =

Dear:

This is in response to your request dated November 9, 2005, for a private letter ruling, submitted by your authorized representative, concerning the proper treatment of a distribution from Decedent A's individual retirement Account ("IRA") (IRA X) under section 408(d)(3) of the Internal Revenue Code (the "Code"), and the proper treatment of Decedent A's interest in Plan Y. Correspondence dated November 9, 2006, and December 12, 2006, supplemented the request.

Your authorized representative has submitted the following facts and representations in support of your ruling request:

Decedent A was born on Date M, and died on Date P, while a resident of State I prior to attaining age 70 ½. Your date of birth is Date N, 1937. You were married to Decedent A at the time of his death. Decedent A died testate. At the time of his death, Decedent A maintained IRA X with Bank B. The beneficiary designation on file with Bank B listed Trust K as the beneficiary of IRA X. As of the date of the death of Decedent A, the value of IRA X was Amount F. Decedent A's estate also include Amount J which was the balance of his interest under Plan Y, a plan which is represented to be qualified under section 401(a) of the Code. With respect to Decedent A's interest in Plan Y, it has been represented on your behalf that Trust K is the named beneficiary of said interest.

On Date Q, 2003, Decedent A entered into an agreement which amended and restated an agreement dated Date R, 1992 which established Trust K. Upon Decedent A's death, Trust K became irrevocable pursuant to section 5.01 of Trust K. At Decedent A's death you became the sole Trustee of Trust K, pursuant to section 3.03(a).

Section 7.02 of Trust K provides that the property in Trust K remaining after the payment of debts, administration expenses, and taxes, and after the disposition of any specifically identified property is to be divided into two separate shares identified as the "Marital Share", and the "Bypass Share".

Sections 7.02, 7.03, and 7.04 of Trust K, provide, in tandem, that allocations to the Marital Trusts should be made prior to allocations to the Bypass trusts.

You, acting in your capacity as the sole Trustee have the authority, pursuant to section 7.05 of Trust K, to allocate property between the Marital Share and the Bypass Share in any way that you deem appropriate subject to the requirement that such allocation of assets be representative of the appreciation or depreciation in the value of the assets being allocated.

Section 7.05 of Trust K provides that:

If there is no federal estate tax in effect at the time of my death and section 1022 of the Internal Revenue Code is in effect, my Trustee shall select assets to satisfy the bequests to the Bypass Share and the Marital Share having the lowest fair market value necessary to utilize the basis increase allowed under sections 1022(b) and (c) of the Internal Revenue Code. However, I authorize my Trustee, other than an interested Trustee to depart from this direction if such Trustee determines that there is good reason to do so. In deciding whether to depart from this direction, such factors as the fact that an asset may be more likely to be sold in the near future than another asset and protection of certain assets for future generations. A Trustee, acting in good faith, shall not be liable to any beneficiary for exercising or failing to exercise its discretion in making allocations under this Section.

If the federal estate tax is in effect at my death, my Trustee shall have complete authority and discretion to satisfy the fractional gift in cash or in kind, or partly in cash and partly in kind or in undivided interests in property. To the extent that there are insufficient assets qualifying for the marital deduction to fully fund the Marital Share, the amount of the funding to the Marital Share shall be reduced accordingly, and I acknowledge that the amount of funding may be affected by actions of my Trustee and my Personal Representative in making certain tax elections.

The fractional share so determined shall be fixed and shall not vary with changes in the value of the trust property subsequent to the valuation date used for federal estate tax purposes. However, since the fractional share is not intended to be a gift of a specified dollar amount or pecuniary in nature, the fractions shall be applied to the assets of the trust at their actual value on the effective date or dates of allocation so that the actual value of the fractional share of the trust property resulting from the application of such fraction will reflect fluctuations in the value of the trust property.

Allocations of assets by my Trustee shall be limited as set forth below:

(a) Ineligible Assets

My Trustee shall not allocate property or the proceeds of any property to the Marital Share that does not qualify for the federal estate tax marital deduction.

(b) Tax Consequences of Certain Allocations

I request that my Trustee always consider the tax consequences of allocation or distributing to the Marital Share any policy of insurance that insures the life of my wife, property subject to the foreign death credit, property on which a tax credit is available, or property that is income in respect of a decedent under the Internal Revenue Code.

(c) Surviving Spouse's Interest in Community Property

Any interest my wife has in community property that is or becomes trust property at my death, even though not included in my gross estate for federal estate tax purposes and not included in the computation for the fractional share, shall be allocated to the Marital Share. My wife shall have the absolute and unrestricted right to withdraw all of the net income and trust principal consisting of her community property.

With respect to your ability as trustee of Trust K to allocate the IRA X (subsequently IRA Y) amounts and Decedent A's Plan Y interest between and among the various Shares created under the provisions of Trust K, your authorized representative has represented that section 18.09 of Trust K requires Trust K be administered in accordance with the laws of State I.

Additionally, your authorized representative has represented and has presented evidence supporting his representations, that provisions of Statute Z of State I required the Trust K trustee to consider the best interests of the Trust K beneficiaries prior to said allocation. Satisfaction of this requirement required the trustee's action to avoid the accelerated payment of income taxes. In this regard, section 17.03 of Trust K requires the trustee (s) thereof to exercise her/their administrative and investment powers "...in the best interests of the beneficiaries". Thus, your representative asserts that, in order to comply with this requirement, you, as trustee, had to allocate the IRA X ("Y") assets to the Trust K Marital Share, and also had to allocate Decedent A's interest in Plan Y to the Trust K Marital Share.

Section 7.06 of Trust K provides that the Marital Share is further divided into an Exempt Marital Share and a Nonexempt Marital Share applying a fractional pick-and-choose formula as directed by section 7.07 and section 7.08. You, in your capacity as the sole Trustee, are granted authority to allocate assets between the Exempt Marital Share and the Nonexempt Marital Share in any way that you deem appropriate subject to the requirement that such allocation of assets be representative of the appreciation or depreciation in the value of the assets being allocated. Both the Exempt Marital Trust, and the Nonexempt Marital Trust designate you as the sole beneficiary during your lifetime, and the provisions of each are

designed to qualify for the marital deduction in calculating Decedent A's taxable estate for federal tax purposes.

With respect to the Nonexempt Marital Trust, section 9.01 of Trust K provides that the trustee of Trust K shall distribute to you, Decedent A's surviving spouse, the entire net income of said Nonexempt Marital Trust at least annually.

Section 9.02 of Trust K provides that the trustee of Trust K shall pay as much principal of the Nonexempt Marital Trust to the surviving spouse of Decedent A as the trustee determines is advisable for any purpose during her lifetime.

Pursuant to sections 10 and 11 of Trust K, the children of Decedent A are the beneficiaries of assets allocated to the subtrusts created under the Bypass Share of Trust K.

Sections 15.01 (c) and (d) of Trust K provide that you (as trustee) must withdraw the greater of (i) the amount of income earned by the Exempt Marital Trust and the Nonexempt Marital Trust, or (ii) the required minimum distribution under section 401(a)(9) of the Code. Also, these sections provide that you (as Trustee) "may withdraw such additional amount as the Trustee deems advisable...All amounts so withdrawn (net of expenses) shall be immediately distributed to my wife."

As of the date of Decedent A's death, the Unified Credit was fully available for the purposes of determining the federal estate tax liability arising by reason of his death. As of the date of death of Decedent A, the generation skipping transfer exemption was fully available for purposes of determining the federal estate tax liability arising by reason of his death.

Acting in your capacity as the sole Trustee and exercising your discretion as Trustee to allocate specific assets entirely to one sub-share of the Marital Share to the exclusion of the other sub-share, you have elected to allocate the entire balance of Decedent A's IRA X (Amount F) to the Nonexempt Marital Share. Also, you have elected to allocate the entire balance of Plan Y, Amount J, to the Nonexempt trust of the Marital Share. As a result of such allocations, IRA X funds represent approximately 30 percent of the Marital Share, and Plan Y funds represent approximately 10 percent of the Marital Share.

By letter dated Date S, 2004, Bank B transmitted to you the forms to allow you to transfer the assets held in IRA X to a trust account. You then sought legal and financial advice from Firm D. You and your daughter met with Firm D on Date T, 2004, to discuss the administration of Decedent A's estate and to review the correspondence from Bank B. Based on your discussions with Firm D it was your expectation that the forms would be completed in a manner that would preserve the continued qualification of IRA X under section 408(a) of the Code. With that understanding, you completed the forms which were then sent to Bank S.

In Firm D, your account was assigned to Individual E, an attorney inexperienced in estate planning which involves qualified arrangements and spousal rights with respect thereto. As a result of instructions from Individual E, Bank B treated the forms sent to you on or about Date S, 2004, as constituting your instructions to withdraw the entire balance from IRA X and transfer Amount M (approximately) to an account not complying with section 408 of the Code, and processed them accordingly.

In this regard, on or about Date U, 2004, Bank B transferred, by means of a trustee-to-trustee transfer, an amount approximating Amount M from IRA X to IRA Y, another IRA maintained with Bank B created in the name of Decedent A (Deceased) FBO Trust K.

Three days later, on or about Date V, 2004, the amounts standing in IRA Y were transferred to Account T, a non-IRA account maintained with Bank B for the benefit of Trust K.

On Date W, 2004 you withdrew Amount G from Account T in order to provide necessary funds for your support, leaving Amount H (approximately) in Account T. No other part of the assets remaining in IRA X and subsequently transferred first to IRA Y and then to Account T) (approximating Amount H) has been used.

On or about Date X, 2004, pursuant to your instructions, Bank B prepared the documentation to accomplish an electronic transfer of the funds standing in Account T to an account benefiting Trust K with Bank C. On or about Date Y, 2004, the money was transferred to a non-IRA account with Bank C.

In 2005, you received a 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA, Insurance Contracts, etc., from Bank B which reported Amount L as taxable income. You met with your accountant and learned for the first time that Bank B interpreted the instructions from Firm D as a request to take a lump sum distribution from IRA X (using IRA Y as an interim IRA) and transfer it to a non-IRA account (Account T) instead of transferring it to another IRA.

With respect to Decedent A's interest in Plan Y, as noted above, it has been represented on your behalf that Trust K is the named beneficiary of said interest. It has also been represented that since the date of Decedent A's death, no distributions have been made from his Plan Y account.

Based on the above facts and representations, you, through your authorized representative, request the following rulings:

1. That you, as the surviving spouse, will be treated as having been eligible to receive the entire distribution from Decedent A's IRA X (retitled IRA Y on an interim basis) maintained at Bank B as a result of your interest in Trust K with the result that you were eligible to roll over funds distributed from IRA X (temporarily transferred to IRA Y) into an IRA maintained in your name;
2. That you, as the surviving spouse, will be treated as being eligible to receive the entire distribution from Decedent A's interest in Plan Y as a result of your interest in Trust K with the result that you are eligible to roll over a single sum distribution of the full amount standing in Decedent A's account in Plan Y into an IRA maintained in your name; and
3. That the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of an amount not to exceed Amount H from IRA Y thus permitting said Amount H (or any portion thereof) to be contributed to an IRA set up and maintained in your name because the failure to waive such requirement would be against equity or good conscience.

With respect to your first and second ruling requests, section 402(c)(1) of the Code states that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and such distribution is subsequently transferred to an eligible retirement plan, then such distribution shall not be includable in gross income for the taxable year in which paid.

Section 402(c)(2) of the Code states that in the case of any eligible rollover distribution, the maximum amount transferred to which the preceding sentence refers shall not exceed the portion of such distribution which is includable in gross income. This limitation does not apply to amounts transferred to an IRA described in Code section 408(a).

Section 402(c)(4) of the Code defines the term "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust, except for certain exceptions, none of which are applicable hereto.

Section 402(c)(8)(B) of the Code, in pertinent part, defines "eligible retirement plan" as (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract), (iii) a section 401(a) qualified retirement plan, and (iv) an annuity plan described in Code section 403(a).

Section 402(c)(3) of the Code provides, generally, that the exclusion from income shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 402(c)(5) of the Code states that a transfer to an eligible retirement plan described in (i) or (ii) of subparagraph (8)(B) resulting in any portion of a distribution being excluded from gross income under paragraph (1) shall be treated as a rollover contribution described in Code section 408(d)(3).

Section 402(c)(9) of the Code provides, generally, that if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) will apply to such distribution in the same manner as if the spouse were the employee.

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer 12, provides, generally, that if a distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee.

Section 408(d)(1) of the Code provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Section 408(d)(3) of the Code provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides, generally, that Code subsection 408(d)(3)(A)(1) does not apply to a distribution received from an IRA if at any time during the 1-year period ending on the date of receipt the receiving individual received any other amount described in said Code subsection which was not includible in his gross income because of the application of said subsection.

Section 408(d)(3)(C)(i) of the Code provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual. Thus, pursuant to section 408(d)(3)(C)(ii), a surviving spouse who acquires IRA proceeds from and by reason of the death of her husband, may elect to treat those IRA proceeds as her own and roll them over into her own IRA.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

On April 17, 2002, Final Income Tax Regulations ("regulations") were published in the Federal Register with respect to sections 401(a)(9) and 408(a)(6) of the Code. (See also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the regulations, Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

The Preamble to the "Final" regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60 day period. A rollover may be accomplished even if IRA assets pass through either a trust and/or an estate.

Generally, if either a decedent's qualified plan or IRA proceeds pass through a third party, e.g., a trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to roll over either the qualified plan or the IRA proceeds into his/her IRA.

However, in the present case, the provisions of Trust K, in conjunction with Statute Z of State I, either required or require that you, as trustee, allocate both IRA X (temporarily IRA Y) and Decedent A's interest in Plan Y to the Marital Share created under the terms of Trust K. The provisions of Trust K then either gave or give you, the sole trustee of Trust K, wide authority to, and complete discretion in, allocating Trust K assets to the various sub-shares created under the terms of Trust K's Marital Share. Using this discretion, you either have determined or are determined to allocate both the IRA X (retitled IRA Y) funds and Decedent A's interest in Plan Y to the Nonexempt Marital Share created under the provisions of Trust K. Once so allocated, you, as trustee, either had or have the sole and complete authority to pay any or all Nonexempt Marital Trust principal to yourself, as Decedent A's surviving spouse, for any reason whatever.

Consistent with such grant of authority, you, as trustee of Trust K, intend to request a distribution of Decedent A's Plan Y balance and then pay yourself, as primary beneficiary, the full amount distributed from Plan Y. Upon receipt, you, as beneficiary, intend to accomplish a timely rollover of the Plan Y distribution into an IRA that will be set up in your name. Under this set of circumstances, all action taken by you with respect to both the Plan Y distribution and the subsequent rollover into an IRA will be in accordance with the terms of Trust K.

Additionally, with respect to Decedent A's IRA X, you had the sole and complete authority to pay yourself the full amount standing in IRA X (temporarily retitled IRA Y) after allocating said IRA X to the Nonexempt Marital Trust created under the provisions of Trust K. Thus, no third party had any authority to preclude your receiving Decedent A's IRA X.

Therefore, under the facts of this ruling request, stated above, it is appropriate to treat you as the payee and beneficiary of IRA X for purposes of sections 408(d)(1) and 408(d)(3) of the Code, and as the .

Thus, with respect to your first and second ruling requests, we conclude as follows:

1. That you, as the surviving spouse, will be treated as having been eligible to receive the entire distribution from Decedent A's IRA X (retitled IRA Y on an interim basis) maintained at Bank B because of your interest in Trust K with the result that you were eligible to roll over funds distributed from IRA X (temporarily transferred to IRA Y) into an IRA maintained in your name; and
2. That you, as the surviving spouse of Decedent A, will be treated as being eligible to receive the entire distribution from Decedent A's interest in Plan Y as a result of your interest in Trust K with the result that you are eligible to roll over a single sum distribution of the full amount standing in Decedent A's account in Plan Y into an IRA maintained in your name

With respect to your third ruling request, section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted on your behalf indicate that your legal advisor did not take the steps to insure that the amounts remaining in IRA X (retitled IRA Y) were placed into another IRA account. Instead, the documentation which you completed upon his advice resulted in the IRA X amounts eventually being transferred to Account T, a non-IRA account. Said transfer to Account T was contrary to your instructions to roll over the funds from IRA X into another IRA.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of an amount not to exceed Amount H from IRA X (retitled IRA Y). You are granted a period not to exceed 60 days as measured from the date of this letter ruling to contribute an amount not to exceed Amount H into an IRA (or IRAs) set up and maintained in your name. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of said Amount H (or any lesser amount) into another IRA (or IRAs) set up and maintained in your name will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code (made applicable to IRAs pursuant to Code section 408(d)(6)), if any. In this regard, we note that under the provisions of either of the sub-shares found in Trust K's Marital Share you were the sole individual whose life expectancy had to be considered for purposes of determining who was/is the "designated beneficiary" of both IRA X (IRA Y) and Decedent A's interest in Plan Y.

This ruling letter assumes that IRA X (retitled IRA Y) either is or was qualified under section 408(a) of the Code at all times relevant thereto. It also assumes that the rollover IRA into which you will roll over part or all of the IRA X distribution (not to exceed Amount H) and the Plan Y distribution referenced above will also meet the requirements of section 408(a) at all times relevant thereto. Finally, it assumes that Plan Y is qualified within the meaning of Code section 401(a) as represented.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

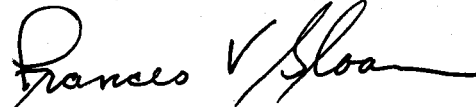
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A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please call ***** (ID **-****) at (***) ***-**** (not a toll free number).

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Frances V. Sloan".

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Notice of Intention to Disclose
Deleted Copy of Ruling

CC: